# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1936**

## No. 305

WAYNE UNITED GAS COMPANY, PETITIONER,

*vs.*

OWENS-ILLINOIS GLASS COMPANY, LIBBEY-OWENS-FORD GLASS COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

**PETITION FOR CERTIORARI FILED AUGUST 22, 1936.**

**CERTIORARI GRANTED OCTOBER 12, 1936.**

# SUPREME COURT OF THE UNITED STATES

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# TRANSCRIPT OF RECORD

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA AT CHARLESTON.

In the Matter of

WAYNE UNITED GAS COMPANY,
DEBTOR,

No. 3187. In Bankruptcy.

Fred O. Blue, Esq., and Robert S. Spilman, Esq., for Appellant; W. James MacIntosh, Esq., Rummel, Blagg & Stone, Thomas B. Jackson, Esq., and Brown, Jackson & Knight, for Appellees.

(Be it Remembered that heretofore, to-wit: At a District Court of the United States for the Southern District of West Virginia, at Charleston, in said District, on March 2, 1936, the following order was entered of record:)

(2) **ORDER**

In the Matter of

WAYNE UNITED GAS COMPANY,
A CORPORATION,
Debtor.

In Bankruptcy. No. 3187.

On the 7th day of February, 1936, came Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, by W. James MacIntosh and Rummel, Blagg & Stone, their attorneys, and tendered their joint and separate objections to the approval of the original petition filed herein by the Debtor, Wayne United Gas Company, on the 25th day of November, 1935, and the amended and supplemental petition of said Debtor filed

herein on the 10th day of December, 1935, and their joint and separate motion to dismiss the said petitions, together with the several exhibits referred to in said written objections and motions; which said objections, motion, and accompanying exhibits, having been seen and inspected by the Court, are now ordered to be filed herein. And at the same time came also the Chase National Bank of the City of New York, a corporation, and Paul C. Beardslee, Trustees under the indenture of mortgage of the Wayne United Gas Company dated June 1, 1929, securing its 6.50 per cent sinking fund convertible gold bonds, by Brown, Jackson & Knight and Milbank, Tweed, Hope & Webb, their attorneys, and here tendered their written appearance and answer to the petitions of the Debtor filed herein as aforesaid, which said appearance and answer, being seen and inspected by the Court, are now ordered to be filed herein.

And thereupon on said last mentioned date came also the Debtor, Wayne United Gas Company, by Blue, Dayton & Campbell and Price, Smith & Spilman, its attorneys, and moved the Court to approve its said several (3) petitions theretofore filed herein as aforesaid, as properly filed under the provisions of Section 77B of the Bankruptcy Act, which motion was resisted by the said Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, and by said Chase National Bank of the City of New York and Paul C. Beardslee, Trustees; and upon the hearing of said motion, petition and objections the Debtor and said Glass Companies here tendered and filed their written stipulation relative to the filing and consideration of the said several exhibits referred to in said written objections and motion of the Glass Companies; and the Debtor also tendered and filed, by agreement of counsel, a printed copy of the general mortgage indenture executed by the Wayne United Gas Company under date of June 1, 1929; and thereupon, on said date, all matters arising upon the said petitions of the Debtor, upon its motion to approve the same, upon the said objections of said Glass Companies, and their motion to dismiss the said petitions, and upon said answer of the above named Trustees, were fully heard upon the record and the arguments of counsel.

And now, on this 2nd day of March, 1936, the Court,

having maturely considered the matters aforesaid, is of opinion, and doth accordingly find, that the said several petitions of the Debtor, and the plan of reorganization set out and described therein, do not present a feasible method of re-organizing the Debtor corporation, and do not adequately or fairly provide for the protection of the rights and interests of the holders of the first mortgage bonds of the Debtor as required by law, or for the realization by them of the value of their interests or liens, and that the holders of more than 92 per cent of said bonds have refused to approve or accept said plan; and the Court is further of opinion and doth find that said petitions do not comply with the provisions of said Section 77B of the Bankruptcy Act, and are not filed in good faith within the meaning of said Act. It is therefore adjudged, ordered and decreed that said petitions and each of them be and the same are hereby disapproved, and that the same be dismissed; to which action of the Court, the Debtor, Wayne United Gas Company, (4) objected and excepted.

It is further adjudged, ordered and decreed that the Debtor, Wayne United Gas Company, do pay to the objectors, Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, and to said Chase National Bank of the City of New York and Paul C. Beardslee, Trustees, their costs about their defense to said petitions in this Court in this behalf expended. And nothing further remaining to be done herein, it is further ordered that this cause be retired from the docket.

And the Debtor, Wayne United Gas Company, indicating to the Court its desire and purpose to apply to the United States Circuit Court of Appeals for the Fourth Circuit for an appeal or review of this decree in the manner provided by law, it is further ordered that the effect of this decree be stayed for the period of thirty days from this date to enable the said Debtor to make such application.

(And on another day, to-wit: At a District Court of (5) the United States for the Southern District of West Virginia, at Charleston, in said District, on April 24, 1936).

**ORDER**

IN THE MATTER OF

WAYNE UNITED GAS COMPANY,
DEBTOR,

No. 3187—In Bankruptcy.

THIS 24th day of April, 1936, came the Wayne United Gas Company, the above named debtor, and tendered and asked leave to file its petition praying that the order or decree entered by this Court in the above styled proceeding on the 2nd day of March, 1936, be set aside, vacated and annulled, and that a rehearing or a review of all matters arising in the above styled proceeding be granted and awarded to the said petitioner, because of error in said order or decree upon the grounds as set forth in the assignment of errors presented therewith, and that upon a rehearing, that an order or decree be entered herein granting and awarding to the petitioner the relief prayed for in its original and amended and supplemental petitions, and with said petition tendered its assignment of errors, marked for identification "Petitioner's Assignment of Errors," and attested copy of said order or decree entered on said 2nd day of March, 1936, marked for identification "Exhibit Decree," and notice in writing to the Owens-Illinois Glass Company, a corporation, Libbey-Owens-Ford Glass Company, a corporation, The Chase National Bank, a banking association under the laws of the United States of America, Trustee, and Paul C. Beardslee, Trustee, dated the 16th day of April, 1936, and accepted by counsel of record on the 17th day of April, 1936, which notice, for identification, is marked "Notice of Motion for Leave to File Petition for Rehearing, Etc." and "Motion for Rehearing, etc."

And came also the Owens-Illinois Glass Company, a corporation, and Libbey-Owens-Ford Glass Company, a corporation, by counsel, and The Chase National Bank, (6) Trustee, and Paul C. Beardslee, Trustee, by counsel, and jointly and severally objected to the filing of said petition for rehearing and the several exhibits and

the assignment of errors presented therewith, and jointly and severally objected to the granting of the relief prayed for in said petition for rehearing, or any part thereof, on the ground that the Court has no jurisdiction of the matters set forth in said petition for rehearing and exhibits, and upon the further ground that no cause is shown for the filing thereof or for the granting of the relief therein prayed for.

Upon consideration whereof, it is ordered and decreed that leave to file said petition for rehearing, said exhibits, and petitioner's assignment of errors be, and the same is hereby given, and the same are ordered to be, and accordingly are, filed.

And at the same time said Wayne United Gas Company moved the Court to set aside, vacate and annul the said order or decree entered herein on the 2nd day of March, 1936, because of error therein as set forth in assignment of errors and for a rehearing or a review of all matters arising upon the record in the above mentioned proceedings, and upon the assignment of errors, and that, upon a rehearing, an order or decree be entered by this Court giving and awarding the Wayne United Gas Company the relief prayed for in its original and supplemental petitions, which motion was resisted by the Owens-Illinois Glass Company, Libbey-Owens-Ford Glass Company, The Chase National Bank, Trustee, and Paul C. Beardslee, Trustee, by counsel.

And all questions arising upon the prayer of said petition, the exhibits therewith, the assignment of errors, and upon the above mentioned motion, with objections and resistance thereto of the parties above named, were fully heard and argued by counsel. Thereupon, the Court takes time to consider of its judgment.

(The petition for rehearing and exhibits therewith, referred to in the foregoing order, are in the words and figures as follows:)

**THE PETITION OF THE WAYNE UNITED GAS COMPANY, A CORPORATION, PRAYING THAT THE ORDER OF DECREE ENTERED BY THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, BE SET ASIDE, VACATED AND ANNULLED, AND THAT THE PETITIONER BE GRANTED AND AWARDED A REHEARING, OR REVIEW, OF ALL MATTERS ARISING IN THE ABOVE STYLED PROCEEDINGS, BECAUSE OF THE ERRORS AS SET FORTH IN THE ASSIGNMENT OF ERRORS PRESENTED HEREWITH, AND, UPON A REHEARING, OR REVIEW, THAT AN ORDER BE ENTERED BY THE SAID DISTRICT COURT GRANTING AND AWARDING TO THE PETITIONER, THE SAID WAYNE UNITED GAS COMPANY, THE RELIEF PRAYED FOR IN ITS ORIGINAL AND AMENDED AND SUPPLEMENTAL PETITIONS.**

(7) (Filed April 24, 1936)

In the matter of

WAYNE UNITED GAS COMPANY, DEBTOR.

No. 3187—In Bankruptcy.

TO THE HONORABLE GEORGE W. McCLINTIC, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA:

Your petitioner, the Wayne United Gas Company, a corporation organized and existing under the laws of the State of West Virginia, feeling itself aggrieved by the order or decree made and entered by the said District Court in the above styled proceedings on the 2nd day of March, 1936, dismissing your petitioner's Original and Amended and Supplemental Petitions, therein praying that your petitioner be reorganized pursuant to Section 77B of the Bankruptcy Act, and being advised that the said order or decree is erroneous, and to its prejudice, your petitioner does hereby petition and pray that

the said order or decree, entered on said 2nd day of March, 1936, be set aside, vacated and annulled, and that a rehearing or review of all matters arising in the above styled proceedings be granted and awarded to your petitioner because of error in said order or decree, upon the grounds as set forth in the Assignment of Errors presented herewith, and, upon a rehearing, that an order (8) or decree be entered herein granting and awarding to your petitioner the relief prayed for in its Original and Amended and Supplemental Petitions. A duly certified copy of said order or decree entered on said 2nd day of March, 1936, is filed herewith as a part hereof marked for identification "Exhibit Decree."

Your petitioner is advised that the order or decree entered by said District Court on the 2nd day of March, 1936, is erroneous, and to the prejudice of the petitioner, and that the grounds of error are as set forth in the Assignment of Errors presented herewith and attached hereto, marked for identification "Petitioner's Assignment of Errors."

Your petitioner respectfully represents:

I.

That the petitioner filed its Original Petition in the above styled proceedings on the 25th day of November, 1935, and its Amended and Supplemental Petition on the 10th day of December, 1935, praying that it be reorganized pursuant to Section 77B of the Bankruptcy Act; that on the 7th day of February, 1936, the Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company tendered their joint and separate objection to the approval of said petitions and their joint and separate motion to dismiss the same, together with the several exhibits referred to therein, and, at the same time, The Chase National Bank of the City of New York, a corporation, and Paul B. Beardslee, Trustees under the Indenture of Mortgage of your petitioner dated June 1, 1929, securing your petitioner's 6.50 per cent sinking fund convertible gold bonds, tendered their answer to the said petitions, which joint and separate objections, motion, and answer were on that day filed by order of said Court; and on said 7th day of February, 1936, all matters

arising upon said petitions, motion, objections, and answer were fully heard, together with the arguments of counsel.

(9) II.

That on, to-wit, the 2nd day of March, 1936, there was entered by the said District Court, an order or decree in the above styled proceedings, wherein were and are, the following findings and decree, namely—"that the said several petitions of the Debtor, and the plan of reorganization set out and described therein, do not present a feasible method of reorganizing the Debtor corporation, and do not adequately or fairly provide for the protection of the rights and interests of the holders of the first mortgage bonds of the Debtor as required by law, or for the realization by them of the value of their interests or liens, and that the holders of more than 92 per cent of said bonds have refused to approve or accept said plan; and the Court is further of opinion and doth find that said petitions do not comply with the provisions of said Section 77B of the Bankruptcy Act, and are not filed in good faith within the meaning of said Act. It is therefore adjudged, ordered and decreed that said petitions and each of them be and the same are hereby disapproved, and that the same be dismissed; to which action of the Court, the Debtor, Wayne United Gas Company, objected and excepted."

III.

That all parties concerned, as creditors or stockholders of your petitioner, were present by counsel at the hearing in the District Court, in the above styled proceedings, on February 7, 1936, except as to the holders of $61,000.00 principal amount out of $1,464,000.00 principal amount of your petitioner's outstanding first mortgage bonds, and approximately seven per cent of your petitioner's stockholders. At said hearing, the plan, as set out in the Amended and Supplemental Petition, was submitted and considered and the Court heard the arguments of counsel in support of, and against, the said plan.

While a hearing upon and consideration of a plan are
(10) had, ordinarily, as your petitioner is advised, only

after the requirements of paragraphs (a) (providing for the approval or disapproval of the petition) and (c) (providing for notice of hearing on the plan) of said Section 77B have been followed and complied with, yet, the aforesaid hearing and consideration of the plan, on the said 7th day of February, 1936, were, as your petitioner is advised, proper for the reason that the only creditors of your petitioner who refused to approve or accept the said plan had filed their objections thereto and presented their arguments thereon at the said hearing, and, therefore, for all practical purposes, as your petitioner is advised, the situation, at said hearing, was, on said 7th day of February, 1936, as though all of the requirements of paragraphs (a), (b) and (c) of said Section 77B of the Bankruptcy Act had been followed.

That the said District Court, as counsel for your petitioner interpreted the order or decree of March 2, 1936, as you petitioner is advised, was of the opinion that the plan considered at said hearing on February 7, 1936, was not feasible and that the same did not protect the first lien bondholders in the proper way, and, therefore, that the objections to the plan should be sustained and the petitions dismissed; and that the dismissal of the petitions was not based materially on the refusal of the Court to approve them as such, but was based on the Court's disapproval of the plan.

IV.

While the proceedings had since the entry of said order or decree of March 2, 1936, may not be relevant or material to the prayer of this Petition, yet, so that the Court may be fully advised in respect thereof, the petitioner further represents:

That the petitioner desiring to appeal from said order (11) or decree of March 2, 1936, to the United States Circuit Court of Appeals for the Fourth Circuit, and conceiving that it was required to do so under Section 24b of the Bankruptcy Act, under the situation mentioned in Paragraph III hereof and the interpretation of said order or decree of March 2, 1936, as aforesaid, filed its petition for an appeal under said Section 24b, in the office of the Clerk of the said United States Circuit Court

of Appeals for the Fourth Circuit, on the 20th day of March, 1936, together with its Assignments of Error and a duly certified copy of said order or decree of March 2, 1936, said United States Circuit Court of Appeals being then in vacation; that the first term of the said Circuit Court of Appeals, following the filing of said petition, Assignments of Error, and copy of order or decree therewith, began on Monday, April 6, 1936, and that petitioner, by counsel, on said last named date, appeared in open court and presented and submitted to the Court said petition applying and praying for an appeal under said Section 24b of the Bankruptcy Act, and thereupon Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, by counsel, likewise appeared in open court and opposed the same, and said Circuit Court of Appeals, after hearing the argument of counsel, took said petition under advisement.

That on, to-wit, the 15th day of April, 1936, the said United States Circuit Court of Appeals for the Fourth Circuit, entered an order upon and in respect of said petition praying for an appeal under said Section 24b, in the words and figures following:

"UNITED STATES CIRCUIT COURT OF APPEALS

"FOURTH CIRCUIT

(12) No. 4037.

"Wayne United Gas Company, a corporation, Debtor, Appellant,

vs.

"Owens-Illinois Glass Company, a corporation, Libbey-Owens-Ford Glass Company, a corporation, The Chase National Bank of the City of New York, a banking association under the laws of the United States of America, Trustee, and Paul C. Beardslee, Trustee, Appellees.

"ON PETITION for an appeal to superintend and revise, in matter of law, proceedings of the District Court of the United States for the Southern District of West Virginia, at Charleston. In Bankruptcy.

"UPON CONSIDERATION of the petition for an appeal under section 24b of the Bankruptcy Act in the above entitled matter,

"IT IS, FOR THE REASONS SET FORTH IN THE PER CURIAM OPINION THIS DAY FILED, ORDERED that the appeal prayed for, be, and the same is hereby, denied at the cost of the appellant.

"April 15th, 1936."

That, as appears in the per curiam opinion referred to in said order, the said Circuit Court of Appeals denied to your petitioner an appeal on the ground, as held by said Court, that an appeal lay, as a matter of right, under Section 25(a) of the Bankruptcy Act, and not upon petition or application thereto under Section 24b of the Bankruptcy Act.

V.

That the petitioner has given to Owens-Illinois Glass Company, a corporation, Libbey-Owens-Ford Glass Company, a corporation, The Chase National Bank of the City of New York, a banking association under the laws of the United States of America, Trustee, and Paul C. Beardslee, Trustee, notice in writing (the acceptance of which notice was endorsed thereon in writing on the 17th day of April, 1936, by counsel of record for said Glass Companies and Trustees) that petitioner would, at two o'clock on the afternoon of Friday, April 24, 1936, at the Court Room of the District Court of the United (13) States for the Southern District of West Virginia, in the City of Charleston, County of Kanawha, said State, and within said District, tender and ask leave of said District Court of the United States for the Southern District of West Virginia, to file this, its petition, praying that the order or decree entered by the said District Court in the above styled proceedings on the 2nd day of March, 1936, be set aside, vacated,

and annulled, and that a rehearing or review of all matters arising in the above styled proceedings be awarded to the said Wayne United Gas Company because of errors which will be set forth in the Assignment of Errors to be presented with said petition and filed therewith, if leave therefor be granted, and that, upon a rehearing an order or decree be entered by said District Court giving and awarding to the said Wayne United Gas Company the relief prayed for in its Original and Amended and Supplemental Petitions: And that the said Wayne United Gas Company will, at the same time and place, move said District Court to set aside, vacate, and annul the above mentioned order or decree entered by said District Court on the 2nd day of March, 1936, because of error therein as will be set forth in the Assignment of Errors to be then presented, and for a rehearing or review of all matters arising upon the record in the above mentioned proceedings and upon the Assignment of Errors, and that, upon a rehearing, an order or decree be entered by said District Court giving and awarding to the petitioner the relief prayed for in its Original and Amended and Supplemental Petitions; and will, at the same time and place, move the said District Court for any and all other general and special relief to which the petitioner may, in equity and good conscience, be entitled. The original of such notice, with the endorsed acceptance of counsel of record thereon, is filed herewith, as a part hereof, marked for identification "Exhibit Notice."

(14) PRAYER

Petitioner respectfully prays that the order or decree entered by the said District Court in the above styled proceedings, on the 2nd day of March, 1936, be set aside, vacated and annulled, and that a rehearing or review of all matters arising in the above styled proceedings be granted and awarded to said petitioner, because of error in said order or decree upon the grounds as set forth in the Assignment of Errors presented herewith; and, upon a rehearing, that an order or decree be entered herein granting and awarding to the petitioner the relief prayed for in its Original and Amended and Supplemental Petitions: and may petitioner have all such other further

general and special relief, to which it may, in equity and good conscience, be entitled, and it will ever pray, etc.

WAYNE UNITED GAS COMPANY,
Petitioner.
By FRED O. BLUE,
T. BROOKE PRICE,
Its Attorneys.

BLUE, DAYTON & CAMPBELL,
PRICE, SMITH & SPILMAN,
Of Counsel for Wayne United
Gas Company.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF WEST VIRGINIA.

I, N. R. NOFFSINGER am the President of the Wayne (15) United Gas Company, the corporation which is the petitioner mentioned and described in the foregoing petition, and I do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

N. F. NOFFSINGER.

Subscribed and sworn to before me this 18th day of April, 1936.

ALICE N. HARMISON,
Notary Public in and for the
County of Kanawha, State of
West Virginia.

My commission expires on the 28th day of March, 1940.

(Seal)

## PETITIONER'S ASSIGNMENT OF ERRORS

(16) (Filed April 24, 1936)

In the matter of

WAYNE UNITED GAS COMPANY,
DEBTOR.

In Bankruptcy No. 3187.

Now comes the above entitled Wayne United Gas Company, a corporation, the petitioner herein, hereinafter, at times, referred to as the "debtor," by Fred O. Blue and T. Brooke Price, its attorneys, and files this, its Assignment of Errors in connection with its petition praying that the order or decree entered by the District Court of the United States for the Southern District of West Virginia in the above styled proceedings, on the 2nd day of March, 1936, be set aside, vacated and annulled, and that the said debtor be granted and awarded a rehearing, or review, of all matters arising in the above styled proceedings; because of the errors as set forth in this, the Assignment of Errors, and, upon a rehearing, that an order be entered by said District Court granting and awarding to the debtor, the relief prayed for in its Original and Amended and Supplemental petitions; and says that the decree made and entered herein on the said 2nd day of March, 1936, is erroneous, and in respect thereof assigns errors as follows:

I

The Court erred in finding and holding in effect that a plan of reorganization for a debtor corporation under Section 77B of the Bankruptcy Act, which provides for making up all payments in arrears and curing all defaults under the first mortgage on the property of the debtor, setting aside the acceleration of maturity of the first mortgage bonds by reason of such defaults, and remitting the first mortgage bondholders to their former (17) position, without change, (except that the former position of the first mortgage bondholders will be made

better in this—that the provisions of the Sinking Fund for the retirement of the first mortgage bonds will, under the plan, automatically become more favorable to the first mortgage bondholders), is not feasible and does not comply with the provisions of Section 77B, unless such plan has been accepted by the holders of two-thirds in amount of the first mortgage bonds.

II

The Court erred in finding and holding in effect that a plan of reorganization for a debtor corporation under Section 77B of the Bankruptcy Act, which provides for making up all payments in arrears and curing all defaults under the first mortgage on the property of the debtor, setting aside the acceleration of maturity of the first mortgage bonds by reason of such defaults, and remitting the first mortgage bondholders to their former position, without change, (except that the former position of the first mortgage bondholders will be made better in this—that the provisions of the Sinking Fund for the retirement of the first mortgage bonds will, under the plan, automatically become more favorable to the first mortgage bondholders), does not provide adequate protection for the realization by the first mortgage bondholders of the value of their interests, claims, or liens, as required by subdivision (b) of clause (5) of said section of the Bankruptcy Act.

III

The Court erred in finding and holding in effect that the claims and interests of the first mortgage bondholders are affected materially and adversely, within the contemplation of the provisions of Section 77B of the Bankruptcy Act, by reason of a plan of reorganization for a debtor corporation, under said section, which pro-
(18) vides for making up all payments in arrears and curing all defaults under the first mortgage on the property of the debtor, setting aside the acceleration of maturity of the first mortgage bonds by reason of such defaults, and remitting the first mortgage bondholders to their former position, without change, except that the

former position of the first mortgage bondholders will be made better in this—that the provisions of the Sinking Fund for the retirement of the first mortgage bonds will, under the plan, automatically become more favorable to the first mortgage bondholders.

IV

The Court erred in finding and holding that the original petition and the amended and supplemental petition of the debtor were not filed in good faith within the meaning of the Bankruptcy Act.

V

The Court erred in disapproving and rejecting the plan of reorganization outlined in the Original Petition and the Amended and Supplemental Petition of the Debtor, without affording the debtor an opportunity, in due course and at the proper time, to submit its complete plan and without according a hearing upon the plan so submitted, as contemplated by the provisions of Section 77B of the Bankruptcy Act.

VI

The Court erred in finding and holding that the Original Petition and the Amended and Supplemental Petition of the debtor and the plan of reorganization set out and described therein do not adequately or fairly provide for the protection of the rights and interests of the holders of the first mortgage bonds of the debtor, as required by law, or for the realization by them of the value of their interests or liens.

VII

The Court erred in finding and holding that the original petition and the amended and supplemental petition (19) of the debtor do not comply with the provisions of Section 77B of the Bankruptcy Act.

VIII

The Court erred in sustaining the motion of Owens-

Illinois Glass Company and Libbey-Owens-Ford Glass Company to dismiss the Original Petition and the Amended and Supplemental Petition filed herein by the debtor, and in dismissing said Petitions, without first giving to the debtor a day wherein it would have leave to further amend its said petitions and the proposed general plan, or to propose another plan.

IX

The Court erred in finding and holding that the said Original Petition and Amended and Supplemental Petition of the debtor do not present a feasible method of reorganizing the debtor corporation.

X

The Court erred in denying and overruling the motion of the said debtor for the approval of its Original Petition and Amended and Supplemental Petition as properly filed under the provisions of Section 77B of the Bankruptcy Act.

WHEREFORE, the said debtor corporation, petitioner herein, prays that the said order or decree entered by the said District Court in the above styled proceedings, on the 2nd day of March, 1936, be set aside, vacated and annulled, and that the said debtor be granted and awarded a rehearing, or review, of all matters arising in the above styled proceedings, and, upon a rehearing or review, that an order be entered by the said District Court granting and awarding to the debtor, the said Wayne United Gas Company, the relief prayed for in its Original and Amended and Supplemental Petitions (20) filed under Section 77B of the Bankruptcy Act.

FRED O. BLUE,
T. BROOKE PRICE,
Attorneys for Wayne United Gas Company, the debtor.

BLUE, DAYTON & CAMPBELL,
PRICE, SMITH & SPILMAN,
Of Counsel for the debtor.

(And on another day, to-wit: At a District Court of (21) the United States for the Southern District of West Virginia, at Charleston, in said District, on May 12, 1936).

**ORDER**

IN THE MATTER OF

WAYNE UNITED GAS COMPANY,
DEBTOR.

No. 3187—In Bankruptcy.

The Court having maturely considered the petition of the Wayne United Gas Company, the above named Debtor, filed herein on the 24th day of April, 1936, and the prayer thereof; the joint and several objections of Owens-Illinois Glass Company, a corporation, Libbey-Owens-Ford Glass Company, a corporation, The Chase National Bank, Trustee, and Paul C. Beardslee, Trustee, to the filing of said petition; and the motion of the said Wayne United Gas Company, the above named Debtor, made on the aforesaid day, for the relief prayed for in said petition; and the resistance of said motion by the aforesaid Owens-Illinois Glass Company, Libbey-Owens-Ford Glass Company, The Chase National Bank, Trustee, and Paul C. Beardslee, Trustee, is of the opinion that said petition of Wayne United Gas Company, the above named Debtor, is in proper form and substance and that the same and the aforesaid motion have been properly and seasonably presented in this cause, and that no rights have become vested under said order or decree entered herein on March 2, 1936, which will be disturbed by the vacation of said order or decree; and the Court is further of the opinion that good cause exists justifying this court in the exercise of a sound judicial discretion in setting aside, vacating, and annulling the aforesaid order or decree entered by this Court in the above styled proceeding on the 2nd day of March, 1936, and in granting to the said Wayne United Gas Company, the above named Debtor, a rehearing of all of the issues

and matters arising in the above styled proceeding upon the alleged errors set forth in the Assignment of Errors presented with the aforesaid petition, and upon the record in this proceeding.

It is, therefore, adjudged, ordered and decreed, that (22) said order or decree entered by this Court in the above styled proceeding on the 2nd day of March, 1936, be, and the same hereby is, set aside, vacated, annulled, and made of no effect, and that a rehearing or a review of all matters arising in the above styled proceeding be, and the same hereby is, granted and awarded to the said petitioner.

It is further adjudged, ordered and decreed that further hearing in the above styled proceeding, on all questions arising on the record, be had at ten o'clock in the forenoon, on the 22nd day of May, 1936, at Charleston, West Virginia.

To the foregoing action of the Court the said Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, and said The Chase National Bank, Trustee, and Paul C. Beardslee, Trustee, here object and except. And upon their motion, the Court doth now find and certify of record that pursuant to law a regular term of this Court began at Charleston, West Virginia, on the 21st day of April, 1936.

(And on another day, to-wit: At a District Court of (23) the United States for the Southern District of West Virginia, at Charleston, in said District, on May 28, 1936.)

## DECREE

In the Matter of

WAYNE UNITED GAS COMPANY,
Debtor.

In Bankruptcy. No. 3187.

On the 22d day of May, 1936, came the Debtor, by Blue,

Dayton & Campbell and Price, Smith & Spilman, its attorneys, the Owens-Illinois Glass Company and Libbey-Owens Ford Glass Company, by W. James MacIntosh and Rummel, Blagg & Stone, their attorneys, and the Chase National Bank of the City of New York, a corporation, and Paul C. Beardslee, Trustees, by Brown, Jackson & Knight and Milbank, Tweed, Hope & Webb, their attorneys; and thereupon this cause came on for further hearing and for a rehearing of all matters arising in this proceeding, pursuant to the petition and motion of the Debtor filed herein on April 24, 1936, and to the order entered herein on the 12th day of May, 1936, granting the rehearing and review prayed for as aforesaid and setting said cause down for hearing at this time.

And thereupon the said Debtor, Wayne United Gas Company, tendered and asked leave to file herein its second amended and supplemental petition, to the filing of which said Glass Companies and the above named Trustees objected, but the Court overruled said objections and doth now adjudge, order and decree that said second amended and supplemental petition be filed herein, to which action the said Glass Companies and the said Trustees except. And the said Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company and the said Chase National Bank of the City of New York, a corporation, and Paul C. Beardslee, Trustees, by counsel, without waiving their objections to the jurisdiction of this Court to consider the matters set out in the Debtor's said petition and motion for rehearing filed (24) herein on April 24, 1936, or the matters set out in its original petition, amended and supplemental petition, or second amended and supplemental petition aforesaid, now ask that their several objections, protests, motions, and answers heretofore filed to the original petition and to the amended and supplemental petition of the Debtor herein be filed, taken and treated as like objections, protests, motions, and answers to the said second amended and supplemental petition this day filed, which is accordingly done; but the Debtor objected to the consideration by the Court of the several exhibits referred to in said written objections and motions of the Glass Companies, and in the stipulation, other than the

printed copies of the Indenture of Mortgage and the General Mortgage, at this time, or at any time before a day to be set by the Court for a hearing upon the plan to be submitted by the Debtor, the Debtor moving the Court to set a day for such hearing, which objection the Court overruled, and to which action of the Court the said Debtor excepted.

And thereupon the Debtor, by counsel, moved the Court to approve its said original petition, its amended and supplemental petition, and its second amended and supplemental petition, and to find that the same are, and that each of them is, filed in good faith, and otherwise in compliance with the requirements of Section 77B of the Bankruptcy Act, and to set a day for a hearing upon the plan which the Debtor would then submit to the Court, being a plan of reorganization as set out, in substance, in the Debtor's said second amended and supplemental petition, with notice to all parties interested in such hearing of the time and place thereof, in such manner as the Court may provide, which motion the said Glass Companies and the said Trustees resisted, upon the several grounds set out in their said objections, motions to dismiss, and answers to said petitions, respectively. (25) And thereupon this cause was fully heard upon the said several petitions of the Debtor, the motion to approve the same, and the several objections, protests, motions to dismiss, and answers of the said Glass Companies and the above named Trustees, upon the several exhibits with all of said pleadings, the written stipulations made and filed herein, upon all the former proceedings had herein, and the arguments of counsel thereon.

Whereupon, the Court, having maturely considered the matters aforesaid, is of opinion, and doth accordingly find, as follows:

(1) That said original petition, amended and supplemental petition, and second amended and supplemental petition, do not comply with Section 77B of the Bankruptcy Act, in that they do not sufficiently show a need for reorganization of the Debtor, and in that the

proposed plans of reorganization set out therein do not comply with said Section 77B.

(2) That said petitions and each of them are not filed in good faith.

(3) That the Debtor's first mortgage indebtedness now amounts to approximately $1,900,000, that the same is all due and payable at this time and that a decree has been entered by the Circuit Court of Kanawha County for the payment thereof, which decree is in full force and effect, and that a decree for the sale of the property and assets of the Debtor subject to said first mortgage has likewise been entered by said Court, which has been affirmed by the Supreme Court of Appeals of West Virginia, and the foreclosure suit is now pending before said Circuit Court for the sole purpose of ascertaining whether or not a breach has been committed of a certain contract for the purchase of gas produced by the Debtor, and if there has been such breach, the damages due it by reason thereof, and thereupon said Circuit Court has been directed by said Supreme Court of Appeals to proceed (26) to execute such decree of sale.

(4) That neither the properties of the Debtor subject to said first mortgage, nor all its properties of every kind, are of sufficient value to pay off the indebtedness secured by said first mortgage, and that there is no immediate prospect of any enhancement in such value; and any prospect of earnings from other sources would be too uncertain and remote to afford protection to the first mortgage bondholders.

(5) That the securities of the Debtor, other than the first mortgage bonds, represent no equity or value in the mortgaged property to support such securities.

(6) That the first mortgage indenture does not make adequate or sufficient provision for the repayment or retirement of the bonds secured thereby at maturity, but makes provision for the application of the corpus of the mortgaged properties to the payment of obligations other than the first mortgage bonds.

(7) That the effect of any reorganization of the character proposed would be to reinstate and continue in effect the provisions of the first mortgage including those provisions which provide for the application of the corpus of the mortgaged property to purposes other than the payment of the first mortgage bonds, except to the extent that said provisions may be modified by such plan of reorganization.

(8) That said petitions are not filed in good faith or with any intention of providing for the payment of said first mortgage indebtedness according to the adjudicated right of its holders, and the necessary result of the approval of said petitions would be to hinder, delay and prevent the payment of said indebtedness, and to continue the control and management of the corporate affairs and business of the Debtor, in the hands of those whose securities represent no property value.

(9) That the several plans for the reorganization of
(27) the Debtor company, as set out in the respective petitions aforesaid,

(a) Do not comply with the provisions of Section 77B of the Bankruptcy Act, and do not present a feasible plan or method of reorganizing the Debtor corporation within the meaning of said Act;

(b) Do not provide adequate protection for the realization by the first mortgage bondholders of the Debtor of the value of their interest, claim and lien, as required by said Act;

(c) Would materially and adversely affect the rights, claims and interests of said first mortgage bondholders, within the meaning of the provisions of said Act, and that the holders of more than 92 per cent of the said first mortgage bonds have refused to approve or accept the same.

(10) That it is not shown, nor does it appear from the record, that any plan of reorganization could be proposed and made effective by the Debtor which would

adequately provide for the protection of the rights, interests, claims and liens of said first mortgage bondholders, or would be accepted by them, and which would otherwise comply with the provisions of said Section 77B of the Bankruptcy Act.

To the foregoing ten findings of law and fact, and to each of them, the Debtor, the Wayne United Gas Company, objected and excepted; and the said Debtor also further objected and excepted as to findings (3), (4), (5), (6), (7), (8), and (10), upon the ground, among others, that as to said findings (3), (4), (5), (6), (7), (8), and (10), the same are either findings of fact or findings of law and fact, before a hearing upon the plan which the Debtor would submit to the Court on a day to be set by the Court for that purpose, the setting of a day for such hearing having been moved for by the Debtor, (28) and, therefore, the Court should not, at this time, have made any findings of fact as to the matters set forth in (3), (4), (5), (6), (7), (8), and (10); and that said findings are not warranted by the record as presently constituted, nor proper at this state of the proceedings in this cause.

It is therefore adjudged, ordered and decreed that the Debtor's motion to approve its several petitions, and each of them and to find that the same are, and each of them is, filed in good faith, and that a day be set for a hearing upon the proposed plan which the Debtor would then submit to the Court, namely, a plan of reorganization as set out, in substance, in the Debtor's second amended and supplemental petition, be and the same is hereby overruled; and that the motions of the said Glass Companies and of the said Trustees to dismiss the Debtor's several petitions, and each of them, be and the same are hereby sustained. It is therefore further adjudged, ordered and decreed that said petitions of the Debtor and each of them be and the same are hereby disapproved, and that the same be dismissed; to which action of the Court, the Debtor, Wayne United Gas Company, objected and excepted.

It is further adjudged, ordered and decreed that the

Debtor, Wayne United Gas Company, do pay to the objectors, Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, and to said Chase National Bank of the City of New York and Paul C. Beardslee, Trustees, their costs about their defense to said petitions in this Court in this behalf expended. And nothing further remaining to be done herein, it is further ordered that this cause be retired from the docket.

And the Debtor, Wayne United Gas Company, indicating to the Court its desire and purpose to appeal from this order or decree to the United States Circuit Court of Appeals for the Fourth Circuit in the manner provided by law, it is further ordered that the effect of this
(29) decree be stayed for the period of thirty days from this date to enable the said Debtor to make such application.

(The Debtor's Second Amended and Supplemental Petition, referred to in the foregoing order, is in the words and figures as follows:)

## DEBTOR'S SECOND AMENDED AND SUPPLEMENTAL PETITION UNDER SECTION 77B OF THE BANKRUPTCY ACT

(30) (Filed May 28, 1936).

IN RE: WAYNE UNITED GAS COMPANY,
A Debtor.

No. 3187—In Bankruptcy.

TO THE HONORABLE THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA:

The Second Amended and Supplemental Petition of WAYNE UNITED GAS COMPANY, a corporation under the laws of the State of West Virginia, with its principal office at The City of Charleston, Kanawha County, said State:

| | | |
|---|---|---|
| Prepaid rentals, insurance, etc. | | 845.72 |
| Unamortized debt discount and expense | | 23,704.07 |
| Total Assets | | $3,229,745.01 |

(33) Liabilities

| | | |
|---|---|---|
| Capital Stock | | |
| Issued and outstanding—250,000 shares | | $250,000.00 |
| Funded debt— | | |
| First mortgage 6 1/2% bonds due June 1, 1944, | $1,464,000.00 | |
| Five year 7% notes due June 1, 1934 | *475,000.00 | |
| *Secured by general mortgage 7% bonds due June 1, 1939, in equal amount | | 1,939,000.00 |
| Current liabilities— | | |
| Notes payable to Commonwealth Gas Corp. | $158,000.00 | |
| Notes payable to others | 58,792.71 | |
| Accounts payable | 3,446.65 | |
| Interest payable on funded debt | 492,238.33 | |
| Interest payable on notes payable | 60,341.96 | 772,819.65 |
| Accrued liabilities— | | |
| Taxes accrued | 5,044.78 | |
| Other accrued liabilities | 1,415.32 | 6,460.10 |
| Reserve for depreciation and depletion | | 454,049.76 |
| Capital surplus | | 320,758.00 |
| Earned surplus (deficit) | | 513,342.50 |
| Total liabilities | | $3,229,745.01 |

"'NOTE: The foregoing balance sheet does not reflect claim against purchasers of gas by reason of their failure to take the same in quantities as provided in contract dated June 5, 1929.

"'4. Equity receivership proceedings are pending against the Debtor, as follows:

(a) Proceedings in equity in the Circuit Court of Kanawha County, West Virginia, wherein John B. Bell et al are plaintiffs and Wayne United Gas Company and others are defendants, and in which case the said Circuit Court of Kanawha County, by decrees pronounced therein on the 21st day of June, 1932, and the 15th day of July, 1932, appointed Ross B. Thomas and Herman L. (34) Bennett as Receivers for the Debtor's properties situate in the State of West Virginia, and they are still acting as such and are in possession of Debtor's properties in West Virginia.

(b) Proceedings in equity in the Morgan Circuit Court of Morgan County, Kentucky, wherein the Chase National Bank of the City of New York and Paul C. Beardslee, Trustees, are plaintiffs, and the Wayne United Gas Company and others are defendants, in which case the said Morgan Circuit Court, by decree pronounced therein on the 18th day of October, 1932, appointed J. Henry Cole Receiver for the Debtor's properties situate in the State of Kentucky, and he is still acting as such and is in possession of Debtor's properties in Kentucky.

5. The Debtor is in need of relief under the provisions of Section 77B of the Bankruptcy Law of the United States for the following reasons: The earnings of the Debtor in recent years have been insufficient to enable it to meet the annual interest and sinking fund charges under its first mortgage bonds and under its general mortgage bonds. No interest has been paid upon such bonds since the 1st day of December, 1931. By reason of existing defaults, the trustees in the first lien deed of trust or mortgage have declared the principal amount of the bonds secured thereby to be now due and payable. The forced liquidation of the assets of the Debtor would result in the sacrifice of those assets to the great detriment of its creditors. The interest of the

Debtor and its creditors and stockholders will best be preserved by the continuance of its business as a going concern under a Plan of Reorganization which can be accomplished under the provisions of said Section 77B of the Bankruptcy Law of the United States.

6. The Debtor, is unable to meet its debts as they mature and upon information and belief the value attributed to the assets of the Debtor on its books as set (35) forth in the foregoing statement of assets and liabilities is greatly in excess of the present fair value of such assets and that the Debtor is insolvent, in the sense that it is unable to meet its debts as they mature.

7. Your Petitioner, the Debtor, proposes that it shall effect a reorganization under said Section 77B of the Bankruptcy Law.

8. There is attached hereto, marked 'Exhibit A', a certified copy of the resolutions passed by the board of directors of Debtor at a meeting thereof duly called, convened and held on the 28th day of October, 1935, authorizing the filing of this petition.

WHEREFORE the Debtor prays:

(a) That this Court find that this petition complies with Section 77B of the Bankruptcy Act of the United States, and that it has been filed in good faith, and that this Court approve the same as properly filed under said section of said act.

(b) That this Court, upon such approval of this petition and after hearing upon notice to such others, if any, as the Judge of this Court may determine, appoint a Trustee or Trustees of the Debtor's estate, with authority to operate the business of the Debtor subject to the supervision and control of this Court, fix the amount of the bond, prescribe the powers and duties of the trustee or trustees, and require the trustee or trustees to give any and all notices to creditors and stockholders, and cause the publication thereof to be made in such manner as the Court shall direct, or as required by law, of the time and place of any hearing ordered upon this petition.

(c) That upon such approval of this petition this Court enjoin and stay the commencement or continuation (36) of suits against the Debtor until after the final decree entered in this cause.

(d) That upon such approval of this petition this Court direct Ross B. Thomas and Herman L. Bennett, as Receivers of the Debtor appointed by the Circuit Court of Kanawha County, West Virginia, and J. Henry Cole, as Receiver of the Debtor appointed by the Morgan Circuit Court, Morgan County, Kentucky, to deliver to the trustee or trustees appointed by this Court, all properties and assets now in the possession or under the control of said Receivers, subject to such provisions as this Court may deem equitable for the protection of obligations incurred by such Receivers and for the payment of their reasonable administrative expenses or allowances.

(e) That your Petitioner be granted all such other and further relief to which it may be entitled."

And now, by way of an amended and supplemental petition, the Debtor further represents:

9. That it hereby adopts and makes as part hereof its said original petition as above quoted and set forth.

10. In respect of the sinking fund and interest payments accrued and unpaid on the First Mortgage 6.50% Sinking Fund Convertible Gold Bonds due June 1, 1944, secured by an Indenture of Mortgage, dated as of the 1st day of June, 1929, (the same being the first lien deed of trust or mortgage referred to in paragraph 5), and the funds in the hands of Ross B. Thomas and Herman L. Bennett, Special Receivers, (appointed pursuant to decree of the Circuit Court of Kanawha County, West Virginia), available for the payment of the sinking fund requirements and interest, exclusive of reasonable allowances to the Special Receivers mentioned and referred to in paragraph 4 hereof and to their attorneys, and to the trustees in the said first lien deed of trust or mortgage and their attorneys, the same are as follows:

"Sinking Fund requirements are $2,000 per month due
(37) 26th of each month.

Sinking Fund requirements have been met to May 26, 1932.

| | |
|---|---|
| Sinking Fund Requirements (in default) | |
| June 26, 1932, to December 26, 1932—7 months @ $2,000 | $14,000.00 |
| Jan. 26, 1933, to December 26, 1933—12 months @ $2,000 | 24,000.00 |
| Jan. 26, 1934, to December 26, 1934—12 months @ $2,000 | 24,000.00 |
| Jan. 26, 1935, to November 26, 1935—11 months @ $2,000 | 22,000.00 |
| Total | 84,000.00 |
| Interest has been paid to December 1, 1931, on $1,464,000 principal amount of First Mortgage 6 1/2% Bonds outstanding | |
| Interest Requirements (in default) 6 1/2% interest on $1,464,000, amounts to $7,930 per month. | |
| December 1, 1931, to November 30, 1935, or 48 months @ $7,930 | 380,640.00 |
| Total requirements for interest and sinking funds to December 1, 1935, | 464,640.00 |
| Estimated amount of accounts payable at December 1, 1935 | 3,500.00 |
| Total of above liabilities and requirements | 468,140.00 |

Funds available in the hands of Ross B. Thomas and Herman L. Bennett, Special Receivers, at December 1, 1935, to discharge liabilities, exclusive of reasonable allowances to the Special Receivers and their attorneys,

and the Trustees in the first lien deed of trust or mortgage and their attorneys;

| | | |
|---|---|---|
| Cash in banks | $450,462.85 | |
| Accounts receivable for November gas sales | 14,509.05 | |
| Total funds available, exclusive of the above referred to reasonable allowances | | 464,971.90 |

11. The Debtor, as Seller, some years heretofore, entered into a written agreement with the Owens-Illinois Glass Company and the Libbey Owens Sheet Glass Company, corporations, (the name of the latter corporation by change in name being now Libbey-Owens-Ford Glass Company) as Buyers, said agreement being dated the (38) 5th day of June, 1929, and whereby the Debtor, as Seller, agreed to deliver from the gas wells drilled and to be drilled on its properties described in the agreement (being the properties of the Debtor situate in the Southern District of West Virginia), and said Glass Companies, the Buyers, agreed to take and/or pay for at least five million cubic feet of gas each day during the term of the agreement, to the extent of the Debtor's capacity to furnish said amount from said premises, with provisions that the Buyers would, under the conditions as set forth in said agreement, take an additional amount of One Million cubic feet of gas each day during the term of the agreement, and with the further provision, under the conditions as set forth in the agreement, that the Debtor, as Seller, should have the right to deliver gas obtained from other sources to make up any deficiency in the respective amounts to be delivered under the agreement: That the prices to be paid for the gas delivered under such agreement were and are as follows—namely—12¢ per 1,000 cubic feet for the calendar year 1930, 13¢ for the calendar year 1931, 14¢ for the calendar year 1932, and 15¢ thereafter throughout the remainder of the term of the agreement. Debtor is advised, and so believes, that said agreement is very valuable and is one of its assets of great value.

12. The Debtor was, by the terms of said agreement,

required to promptly begin development of the premises described in said agreement and to drill the large number of wells as specified and set forth therein; and that, pursuant thereto, Debtor did promptly begin the drilling and continued the drilling, of wells on the premises until May, 1932, when, at the request of the Glass Companies, it suspended further drilling. The Debtor expended for the drilling of such wells and for gathering and transmission lines, pursuant to the requirements of the said (39) agreement, the sum of $445,180.74. No wells have been drilled on the Debtor's properties in the Southern District of West Virginia since the appointment of Ross B. Thomas and Herman L. Bennett, Special Receivers.

13. The Debtor is advised and believes that the said Glass Companies breached said agreement of June 5, 1929, in this, that they failed to take and/or pay for the quantities of gas which they were required to take or pay for under said agreement of June 5, 1929, and by reason of such breach that said Glass Companies are indebted to the Debtor in a large sum of money, the amount whereof has not been determined; and that the question of such breach and the amount of the damages by reason thereof has been raised in said suit in equity in the Circuit Court of Kanawha County, West Virginia, wherein John B. Bell et al, are plaintiffs, and Wayne United Gas Company et als. are defendants, and which question remains undetermined.

14. Upon and following the appointment of Ross B. Thomas and Herman L. Bennett, Special Receivers, by the Circuit Court of Kanawha County, West Virginia, said Receivers continued to deliver, and are now delivering, natural gas to the two Glass Companies produced on Debtor's properties in the Southern District of West Virginia, under the agreement of June 5, 1929, and have collected from the Glass Companies the prices for such gas as provided for in the said agreement, so that there is now in the hands of said Special Receivers the sum of $450,462.85, all of which has come into the hands of said Special Receivers from the sale of such gas under said agreement since their appointment, except the sum of $9.421.73, (which last sum came into the hands of said Special Receivers at the time of their appointment by the Circuit Court of Kanawha County, West Vir-

ginia, as part of the assets of the Debtor), leaving a net amount, in cash, of $441,041.12 which has come into (40) the hands of the said Special Receivers from such sales, and the account receivable of $14,509.05 for gas delivered to the Glass Companies under the said agreement in the month of November, 1935, so that the earnings which have come into the hands of the Receivers, since their appointment, from sales of gas from Debtor's said properties, aggregate in cash and account receivable $455,550.17, and out of which there is payable, as of December 1, 1935, an estimated amount of accounts payable in the sum of $3,500.00, leaving a net amount in cash and account receivable of $452,050.17.

"The Special Receivers have paid all of their operating expenses, including expenses for management contract, (except an estimated amount of accounts payable as of December 1, 1935, of $3,500.00), as well as all taxes now due, except $226.74 payable on the Debtor's properties in the State of Kentucky.

15. The sinking fund requirements under the first lien deed of trust or mortgage and the interest on the bonds secured thereby for the period from the 1st day of June, 1932, to November 30, 1935, aggregate the sum of $417,160.00.

16. The Debtor's properties in the Southern District of West Virginia have not been fully developed by the drilling of necessary wells thereon for such development, so that, for the further and proper development of said properties, a number of additional wells should be drilled thereon: That upon the drilling of such wells the quantities of gas which can be delivered to the Glass Companies from the Debtor's said properties can, and will, be greatly increased, with correspondingly increased income therefrom.

17. The Debtor has negotiations under way for the purchase of additional gas, with satisfactory assurances (41) that the same will be concluded, upon the approval of a Plan of Reorganization, so that Debtor will be in position to, can, and will purchase large quantities of gas, in quantities sufficient to make up any deficiency under the terms of the agreement of June 5, 1929, at a

price which will enable the Debtor to make a fair profit thereon.

18. The Debtor is advised, and so believes, that it can, and will, upon reorganization along the lines of the proposed Plan, hereinafter set forth in substance, in paragraph 19 hereof, earn sufficient moneys from the sale of natural gas under the agreement of June 5, 1929, to fully pay the first lien deed of trust or mortgage bonds and all of its other creditors, and also earn sufficient moneys to cause its stock to have considerable value.

19. Debtor will promptly, and within any reasonable time fixed by the Court, propose a Plan of Reorganization which will be in substance as follows:

(a) The properties of Debtor will be retained by it, or transferred to a new Company, as the case may be, subject to the lien of the Indenture of Mortgage now securing the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds of Debtor, and each and every provision of said Indenture of Mortgage, and the lien thereof, shall be and remain in full force and effect.

All arrears of sinking fund under said Indenture, and all arrears of interest, on the $1,464,000 principal amount of bonds now outstanding thereunder, which shall have accrued up to the time of the consummation of the Plan, will be paid in full in cash upon the consummation thereof, and at that time the full amount applicable to the arrears of sinking fund under said Indenture will be used to redeem bonds then outstanding, at the redemption price provided in said Indenture, thereby immediately (42) reducing the principal amount of bonds outstanding thereunder;

(b) As a part of the Plan, Debtor will agree to furnish or cause to be furnished, at the time of the consummation of the Plan, an amount of cash which, together with the funds available in the hands of the Trustees, will be sufficient to pay

(1) All arrears of sinking fund and interest referred to in sub-paragraph (a) above;

(2) All taxes due and unpaid;

(3) All amounts, if any, secured by specific liens on any Debtor's property, other than amounts secured by the lien of the First Mortgage, the lien of the General Mortgage, and the indirect lien of the Five Year 7% gold notes;

(4) All fees and expenses which may be allowed by the proper court to Receivers and their counsel, Mortgage Trustees and their counsel, Trustees in Bankruptcy and their counsel, and others, if any, either on account of the equity receivership proceedings hereinbefore referred to, or on account of these proceedings;

(5) All other costs of reorganization which may be allowed by this court; and,

(6) Such amount as the court shall deem necessary for working capital for the reorganized company.

"In order to provide the necessary amount of cash for all of the above purposes, Debtor will, within any reasonable time fixed by the court, furnish a commitment to that effect, satisfactory to the court, and will deposit or cause to be deposited in escrow such amount of cash or United States Government obligations as shall be required by the court, as a guarantee that such commitment will be carried out.

The maker of such commitment will receive an unsecured six per cent note of the reorganized company, for all money furnished under such commitment, which note (43) shall be subordinate to the lien of First Mortgage. The interest on such note shall be payable semiannually and the principal shall be payable over a period of five (5) years in such installments as the court shall approve when the Plan is consummated;

(c) The principal of the General Mortgage 7% Gold Bonds of Debtor, and all sinking fund payments, applicable thereto, and all interest on such Bonds, which shall be due and unpaid at the time the Plan is consummated, shall be forever waived and said Bonds, sinking fund payments and interest shall be cancelled, and no obliga-

tions of any character shall be issued in exchange therefor, and the Indenture securing such General Mortgage 7% Gold Bonds shall be cancelled and released.

All other money obligations of the Debtor, which are junior to the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds, and which are not to be paid in cash pursuant to sub-paragraph (b) hereof, whether represented by the Five Year 7% notes, or other notes, or by accounts payable of Debtor, will be cancelled, and surrendered in exchange for Income Debentures or Notes of the reorganized company in amounts equal to the principal amounts of the obligations so cancelled and surrendered. Sinking fund payments in default under the agreement securing the Five Year 7% Notes, and interest in default on all money obligations of Debtor so cancelled and surrendered shall be forever waived and cancelled and no obligations of any character shall be issued in exchange therefor.

The Income Debentures or Notes, to be issued as aforesaid, shall have a maturity date subsequent to the maturity date of the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds; there shall be no sinking fund for the retirement of such Income Debentures or Notes; and interest thereon shall not exceed six per cent per annum, shall be non-cumulative and shall be (44) payable only to the extent, if any, that for any year there shall be net earnings available after payment of all operating expenses, maintenance and taxes, and after payment or allowance in full for such year of all sinking fund payments and interest on the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds, and all installments of principal and interest on the note given to the maker of the commitment referred to in sub-paragraph (b) hereof;

(d) Twenty-five Per Cent (25%) of the capital stock of the reorganized company (which shall be all common stock) will be issued to the person making the commitment referred to in sub-paragraph (b) hereof, and the other seventy-five per cent (75%) will be issued pro rata to the present stockholders of Debtor in exchange for their present certificates of stock;

(e) The Plan shall be subject to amendment by court

order at any time, and the method of consummation shall be under complete control of the court. The Plan shall be consummated as soon as possible, and the court shall, if it sees fit, retain jurisdiction of all parties to the proceedings after the consummation thereof, for the protection, to the extent necessary, of all parties concerned;

(f) All right of action for breach of Debtor's gas sale agreement, dated June 5, 1929, against the buyers thereunder (who now own in excess of 90% of Debtor's First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds) shall be preserved;

(g) Debtor will furnish or cause to be furnished, when the Plan is proposed and submitted, written acceptance of the Plan by at least 66 2/3% in amount of claims of creditors of Debtor of each class, except creditors whose claims will be paid in cash as above provided, and except holders of First Mortgage 6.50 Per Cent Sinking Fund Gold Bonds (whose rights are either not affected by the Plan or are fully protected in accord-
(45) ance with the provisions of Section 77B), and written acceptance thereof by stockholders of Debtor owning 51% of its outstanding stock.

20. There is attached hereto, marked "Exhibit B", a certified copy of the resolutions passed by the Board of Directors of Debtor at a meeting thereof duly called, convened and held on the 9th day of December, 1935, authorizing the filing of this amended and supplemental petition.

WHEREFORE the Debtor prays:

(a) That this Court find that the original petition and this amended and supplemental petition comply with Section 77B of the Bankruptcy Act of the United States, and that the same have been filed in good faith, and that this Court approve the same as properly filed under said section of said Act.

(b) That this Court, upon such approval of said petitions and after hearing upon notice to such others, if any, as the Judge of this Court may determine, appoint a Trustee or Trustees of the Debtor's estate, with au-

thority to operate the business of the Debtor subject to the supervision and control of this Court, fix the amount of the bond, prescribe the powers and duties of the trustee or trustees, and require the trustee or trustees to give any and all notices to creditors and stockholders, and cause the publication thereof to be made in such manner as the Court shall direct, or as required by law, of the time and place of any hearing ordered upon this petition.

(c) That upon such approval of the original petition and this amended and supplemental petition this Court enjoin and stay the commencement or continuation of suits against the Debtor until after the final decree entered in this cause.

(d) That upon such approval of said petitions this Court direct Ross B. Thomas and Herman L. Bennett, as Receivers of the Debtor appointed by the Circuit Court of Kanawha County, West Virginia, and J. Henry Cole, as Receiver of the Debtor appointed by the Morgan (46) Circuit Court, Morgan County, Kentucky, to deliver to the trustee or trustees appointed by this Court, all properties and assets now in the possession or under the control of said Receivers, subject to such provisions as this Court may deem equitable for the protection of obligations incurred by such Receivers and for the payment of their reasonable administrative expenses or allowances.

(e) That your petitioner be granted all such other and further relief to which it may be entitled.

"WAYNE UNITED GAS COMPANY,
"By (Sgd) N. RAY NOFFSINGER,
Its President."

(Sgd) BLUE, DAYTON & CAMPBELL,
(Sgd) PRICE, SMITH & SPILMAN,
Attorneys.

And now, by way of second amended and supplemental petition, the Debtor further represents:

21. That it hereby adopts and makes as part hereof, its said original petition and its said amended and supplemental petition, as above quoted and set forth.

22. That in respect of cash requirements and available funds estimated as at May 31, 1936, the same may be summarized and stated as follows:

| | | |
|---|---|---|
| Cash requirements | | |
| Accrued interest unpaid on First Mortgage Bonds—December 1, 1931, to May 31, 1936, 54 months @ $7,930 per month | | $428,220.00 |
| Sinking Fund requirements of First Mortgage Bonds—May 26, 1932, to May 26, 1936, 48 months @ $2,000 per month | | 96,000.00 |
| Estimated cash requirements for operating expenses applicable to: | | |
| Month of April (paid in May) | $2,840.00 | |
| Month of May (estimated) | 4,140.00 | 6,980.00 |
| Total Requirements | | $531,200.00 |
| (47) | | |
| Cash or equivalent available | | |
| Cash in bank May 1, 1936, in hands of Special Receivers. | | |
| Checking account | 401,092.52 | |
| Time deposit | 101,277.80 | 502,370.32 |
| Collections to be made after 5/1/36 | | |
| For April gas sales—5/15/36 | 14,183.40 | |
| Material sold—second hand | 932.54 | |
| Return premium—insurance | 97.94 | |
| Interest on time deposit for May | 85.90 | |
| For May gas sales | 14,500.00 | |
| | | 29,799.78 |
| Total cash and receivable applicable to business done prior to 5/31/36 | | 532,170.10 |
| Excess of available funds over requirements to May 31, 1936 | | 970.10 |

23. Debtor will promptly, and within any reasonable time fixed by the Court, propose a Plan of Reorganization which will be in substance as follows:

(a) The properties of Debtor will be retained by it, or transferred to a new company, as the case may be, subject to the lien of the Indenture of Mortgage now securing the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds of Debtor, and each and every provision of said Indenture of Mortgage, and the lien thereof, shall be and remain in full force and effect, except that the cumulative feature of the provision of the Indenture allowing for the deduction of certain amounts each year for capital expenditures will be waived by the Debtor for the benefit of the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds, so that the unused allowance for any year shall be cancelled and not deducted in figuring the 60% of available earnings which constitute the additional sinking fund for said Bonds.

All arrears of sinking fund under said Indenture, and all arrears of interest, on the $1,464,000 principal amount of bonds now outstanding thereunder, which shall have accrued up to the time of the consummation of the Plan, (48) will be paid in full in cash upon the consummation thereof, and at that time the full amount applicable to the arrears of sinking fund under said Indenture will be used to redeem bonds then outstanding, at the redemption price provided in said Indenture, thereby immediately reducing the principal amount of bonds outstanding thereunder;

(b) As a part of the Plan, Debtor will agree to furnish or cause to be furnished, at the time of the consummation of the Plan, an amount of cash which, together with the funds available in the hands of the Trustees, will be sufficient to pay

(1) All arrears of sinking fund and interest referred to in sub-paragraph (a) above;

(2) All taxes due and unpaid;

(3) All amounts, if any, secured by specific liens on any of Debtor's property, other than amounts secured

by the lien of the First Mortgage, the lien of the General Mortgage, and the indirect lien of the Five Year 7% Gold Notes;

(4) All fees and expenses which may be allowed by the proper court to Receivers and their counsel, Mortgage Trustees and their counsel, Trustees in Bankruptcy and their counsel, and others, if any, either on account of the equity receivership proceedings hereinbefore referred to, or on account of these proceedings;

(5) All other costs of reorganization which may be allowed by this Court; and

(6) Such amount as the Court shall deem necessary for working capital for the reorganized company.

In order to provide the necessary amount of cash for all of the above purposes, Debtor will, within any reasonable time fixed by the court, furnish a commitment to that effect, satisfactory to the court, and will deposit or cause to be deposited in escrow such amount of cash or (49) United States Government obligations as shall be required by the court, as a guarantee that such commitment will be carried out.

The maker of such commitment will receive an unsecured six per cent note of the reorganized company, for all money furnished under such commitment, which note shall be subordinate to the lien of First Mortgage. The interest on such note shall be payable semi-annually out of the allowance for interest on Debtor's outstanding obligations provided in the Indenture securing the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds, but only after provision for the payment of the interest on the first mortgage bonds and the payment of the monthly amounts as required by sub-paragraph (a) of Section 3.01 of said Indenture have been made, and the payment of such interest out of said allowance shall be non-cumulative. The principal of such note shall be payable out of the allowance for payment or reduction of principal of Debtor's outstanding indebtedness provided in said Indenture, to the extent of such allowance, and the balance only out of 40% of the "available earnings", as defined in said Indenture, after application of 60% thereof to the sinking fund on said bonds,

but only after provision for the payment of the interest on the first mortgage bonds and the payment of the monthly amounts as required by sub-paragraph (a) of Section 3.01 of said Indenture have been made, and such payments out of said allowance shall be non-cumulative, and the cumulative feature of the provision of the Indenture allowing for the deduction of certain amounts each year for the payment or reduction of principal of its outstanding unsecured indebtedness, in determining the available net earnings, is hereby waived and cancelled. Such payments shall be made from time to time as funds shall be available therefor, until the principal of such note shall have been fully paid.

(c) The principal of the General Mortgage 7% Gold (50) Bonds of Debtor, and all sinking fund payments, applicable thereto, and all interest on such Bonds, which shall be due and unpaid at the time the Plan is consummated, shall be forever waived and said Bonds, sinking fund payments and interest shall be cancelled, and no obligations of any character shall be issued in exchange therefor, and the Indenture securing such General Mortgage 7% Gold Bonds shall be cancelled and released.

All other money obligations of the Debtor, which are junior to the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds, and which are not to be paid in cash pursuant to sub-paragraph (b) hereof, whether represented by the Five Year 7% Notes, or other notes, or by accounts payable of Debtor, will be cancelled and surrendered in exchange for Income Debentures or Notes of the reorganized Company in amounts equal to the principal amounts of the obligations so cancelled and surrendered. Sinking fund payments in default under the agreement securing the Five Year 7% Notes, and interest in default on all money obligations of Debtor so cancelled and surrendered shall be forever waived and cancelled and no obligations of any character shall be issued in exchange therefor.

The Income Debentures or Notes, to be issued as aforesaid, shall have a maturity date subsequent to the maturity date of the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds; there shall be no sinking fund for the retirement of such Income Debentures or Notes; and interest thereon shall not exceed six per

cent per annum, shall be noncumulative and shall be payable only as authorized by the Board of Directors out of 40% of the "available earnings" for any year as defined in the Indenture, after application of 60% of such available earnings to the sinking fund on the First Mortgage 6.50 Per Cent Sinking Fund Convertible Gold Bonds.

(d) Twenty-five Per Cent (25%) of the capital stock of the reorganized company (which shall be all common stock) will be issued to the person making the commitment referred to in sub-paragraph (b) hereof, and the other seventy-five per cent (75%) will be issued pro rata (51) to the present stockholders of Debtor in exchange for their present certificates of stock;

(e) The Plan shall be subject to amendment by court order at any time, and the method of consummation shall be under complete control of the court. The plan shall be consummated as soon as possible, and the court shall, if it sees fit, retain jurisdiction of all parties to the proceedings, after the consummation thereof, for the protection, to the extent necessary, of all parties concerned;

(f) All rights of action for breach of Debtor's gas sale agreement, dated June 5, 1929, against the buyers thereunder (who now own in excess of 90% of Debtor's First Mortgage 6.50 Per cent Sinking Fund Convertible Gold Bonds) shall be preserved.

24. There is attached hereto, marked "Exhibit C" a certified copy of the resolutions passed by the Board of Directors of Debtor at a meeting thereof duly called, convened and held on the 18th day of May, 1936, authorizing the filing of this second amended and supplemental petition.

WHEREFORE the Debtor prays:

(a) That this Court find that the original petition, the amended and supplemental petition, and this second amended and supplemental petition comply with Section 77B of the Bankruptcy Act of the United States, and that the same have been filed in good faith, and that this Court approve the same as properly filed under said Section of said Act.

(b) That this Court, upon such approval of said petitions and after hearing upon notice to such others, if any, as the Judge of this Court may determine, appoint a Trustee or Trustees of the Debtor's estate, with authority to operate the business of the Debtor subject to the supervision and control of this Court, fix the amount of the bond, prescribe the powers and duties of the trustee or trustees, and require the trustee or trustees to give any and all notices to creditors and stockholders, and cause the publication thereof to be made in such manner as the Court shall direct, or as required by law, of (52) the time and place of any hearing ordered upon this petition.

(c) That upon such approval of the original petition, the amended and supplemental petition, and this second amended and supplemental petition this Court enjoin and stay the commencement or continuation of suits against the Debtor until after the final decree entered in this cause.

(d) That upon such approval of said petitions this Court direct Ross B. Thomas and Herman L. Bennett, as Receivers of the Debtor appointed by the Circuit Court of Kanawha County, West Virginia, and J. Henry Cole, as Receiver of the Debtor appointed by the Morgan Circuit Court, Morgan County, Kentucky, to deliver to the trustee or trustees appointed by this Court, all properties and assets now in the possession or under the control of said Receivers, subject to such provisions as this Court may deem equitable for the protection of obligations incurred by such Receivers and for the payment of their reasonable administrative expenses or allowances.

(e) That your Petitioner be granted all such other and further relief to which it may be entitled.

WAYNE UNITED GAS COMPANY
By N. R. NOFFSINGER
Its President.

BLUE, DAYTON & CAMPBELL,
PRICE, SMITH & SPILMAN;
Attorneys.

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, TO-WIT:

N. R. NOFFSINGER, (A Credible Person), being duly (53) sworn, says that he is the President of the Wayne United Gas Company, a corporation, the Debtor named in the foregoing second amended and supplemental petition, and that he has read said second amended and supplemental petition and that he knows the contents thereof; that the facts and allegations therein contained are true, except such as therein stated to be made upon information and belief, and that as to such allegations he believes them to be true; also, that said second amended and supplemental petition is filed in good faith.

N. R. NOFFSINGER

Taken, sworn to and subscribed before me, this 18th day of May, 1936.

My commission expires on the 16 day of August, 1937.

BLIGH SNODGRASS
Notary Public in and for
said County of Kanawha.

(seal)

**EXHIBIT C WITH SECOND AMENDED AND SUPPLEMENTAL PETITION**

CERTIFICATE

I, R. J. SKILLMAN, do hereby certify that I am a (54) duly elected, qualified and presently acting Assistant Secretary of Wayne United Gas Company, a West Virginia corporation, and that the following is a true copy of a resolution duly and regularly adopted by the Board of Directors of Wayne United Gas Company at a meeting thereof duly called, convened and held on the 18th day of May, 1936, and that said resolution has not been amended or rescinded:

"WHEREAS, this Company has heretofore filed a pe-

tition and an amended and supplemental petition for reorganization under Section 77B of the Federal Bankruptcy Statutes in the United States District Court for the Southern District of West Virginia; and

WHEREAS, counsel for the Company deem it advisable that a second amended and supplemental petition, in or substantially in the form before this meeting, be filed in said proceedings;

NOW, THEREFORE, BE IT RESOLVED, that this Company file in the District Court of the United States for the Southern District of West Virginia, under and pursuant to Section 77B of the Acts of Congress relating to Bankruptcy, and providing for corporate reorganization, a second amended and supplemental petition in, or substantially in, the form presented to this meeting, with such alterations or changes therein as counsel for this Company may approve, or as the President or Treasurer of this Company, or either of them, signing said Petition, shall by such signing approve, and that the President and Treasurer of this Company be and they are hereby, and each of them singly is authorized and directed in the name and on behalf of this Company to execute and file such second amended and supplemental petition forthwith."

IN WITNESS WHEREOF, I have hereunto signed *by* name and affixed the corporate seal of said Wayne United Gas Company, this 18th day of May, 1936.

R. J. SKILLMAN
Assistant Secretary of Wayne United Gas Company.

(corporate Seal)

## ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

(55) (Filed June 11, 1936)

In the matter of

WAYNE UNITED GAS COMPANY
Debtor

In Bankruptcy—No. 3187

Now comes the Wayne United Gas Company, a corporation, the petitioner and Debtor in the above styled proceedings, hereinafter referred to as the "appellant," and files this its Assignment of Errors and Prayer for Reversal in connection with its petition for an appeal under Section 25(a) of the Bankruptcy Act from the decree made and entered in the above styled proceedings by the Honorable George W. McClintic, Judge of the District Court of the United States for the Southern District of West Virginia, on the 28th day of May, 1936, and says that said decree is erroneous, and in respect thereof assigns the following errors:

I

It was error to overrule appellant's objection to the consideration of the several exhibits referred to in the written objections and motions of Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company, and in the stipulation, other than the printed copies of the Indenture of Mortgage and the General Mortgage, at the hearing on the 22nd day of May, 1936, or at any time before a day set for a hearing upon a plan to be submitted by the appellant.

II

It was error to overrule the appellant's motion made on the 22nd day of May, 1936, to approve its original

petition, its amended and supplemental petition, and its second amended and supplemental petition, and to find that the same were, and each of them was, filed in good faith, and otherwise in compliance with the requirements of Section 77B of the Bankruptcy Act, and to (56) set a day for a hearing upon the plan which the appellant would then submit, being a plan of reorganization as set out, in substance, in the appellant's said second amended and supplemental petition, with notice to all parties interested in such hearing of the time and place thereof, in such manner as the court would provide.

III

It was error to have made any findings of fact, or findings of mixed law and fact as to the plan outlined in the second amended and supplemental petition, before a hearing upon the plan which appellant would submit on a day to be set for that purpose, the setting of a day for such hearing having been moved for by the appellant, and particularly so as to the matters set forth in (3), (4), (5), (6), (7), (8), and (10), of the findings of law and fact, as the same appear in said decree of May 28, 1936.

IV

It was error to find, as was found, the matters set forth in findings (3), (4), (5), (6), (7), (8), and (10) of said decree, because the same are not warranted by the record as presently constituted, nor proper at the stage of the proceedings at the time said decree was entered.

V

It was error to disapprove the appellant's several petitions, and each of them, and to dismiss the same.

VI

It was error to find and hold, in effect, that a plan of reorganization for a debtor corporation under Section

77B of the Bankruptcy Act, which provides for making up all payments in arrears and curing all defaults under the first mortgage on the property of the debtor, setting aside the acceleration of maturity of the first mortgage bonds by reason of such defaults, and remitting the first mortgage bondholders to their former position, without change, (except that the position of the first mortgage (57) bondholders before default will be made much better in this—that the provisions of the Sinking Fund for the retirement of the first mortgage bonds will, under the plan, automatically become much more favorable to the first mortgage bondholders), is not feasible and does not comply with the provisions of Section 77B, unless such plan has been accepted by the holders of two-thirds in amount of the first mortgage bonds.

VII

It was error to find and hold in effect that a plan of reorganization for a debtor corporation under Section 77B of the Bankruptcy Act, which provides for making up all payments in arrears and curing all defaults under the first mortgage on the property of the debtor, setting aside the acceleration of maturity of the first mortgage bonds by reason of such defaults, and remitting the first mortgage bondholders to their former position, without change, (except that the position of the first mortgage bondholders before default will be made much better in this—that the provisions of the Sinking Fund for the retirement of the first mortgage bonds will, under the plan, automatically become much more favorable to the first mortgage bondholders), does not provide adequate protection for the realization by the first mortgage bondholders of the value of their interests, claims, or liens, as required by subdivision (b) of clause (5) of said section of the Bankruptcy Act.

VIII

It was error to find and hold in effect that the claims and interests of the first mortgage bondholders are affected materially and adversely, within the contemplation of the provisions of Section 77B of the Bankruptcy

Act, by reason of a plan of reorganization for a debtor corporation, under said section, which provides for making up all payments in arrears and curing all defaults under the first mortgage on the property of the debtor, (58) setting aside the acceleration of maturity of the first mortgage bonds by reason of such defaults, and remitting the first mortgage bondholders to their former position, without change, except that the position of the first mortgage bondholders before default will be made much better in this—that the provisions of the Sinking Fund for the retirement of the first mortgage bonds will, under the plan, automatically become much more favorable to the first mortgage bondholders.

IX

It was error to find and hold that the original petition, the amended and supplemental petition, and the second amended and supplemental petition of the appellant were not filed in good faith within the meaning of the Bankruptcy Act.

X

It was error to disapprove and reject the plan of reorganization outlined in appellant's second amended and supplemental petition, without affording the appellant an opportunity, at a time set for that purpose, to submit its complete plan and have a hearing thereon, as contemplated by the provisions of Section 77B of the Bankruptcy Act.

XI

It was error to find and hold, in effect, that the second amended and supplemental petition of the appellant and the plan of reorganization, as set out and described therein, do not adequately or fairly provide for the protection of the rights and interests of the holders of the first mortgage bonds of the appellant as required by law, or for the realization by them of the value of their interests or liens.

XII

It was error to find and hold that the appellant's original petition, amended and supplemental petition, and second amended and supplemental petition, do not comply with the provisions of Section 77B of the Bankruptcy Act.

XIII

It was error to find and hold that the petitions, particularly the second amended and supplemental petition, do not present a feasible method of reorganizing the appellant.

(59)

For which errors, the appellant prays that the said decree made and entered as aforesaid on the 28th day of May, 1936, in the above styled proceedings, be reversed, and the said proceedings remanded, with direction to approve the appellant's several petitions, and to find that the same were filed in good faith and otherwise in compliance with the requirements of Section 77B of the Bankruptcy Act, and with further directions to set a day for a hearing upon the plan which the appellant would then submit, being a plan of reorganization as set out, in substance, in the appellant's second amended and supplemental petition, with notice to all parties interested in such hearing of the time and place thereof, and for such other and further relief as may be proper in the premises.

FRED O. BLUE,
ROBERT S. SPILMAN
Counsel for Appellant

BLUE, DAYTON & CAMPBELL,
PRICE, SMITH & SPILMAN,
Of Counsel for Appellant.

## CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Southern District of West Virginia, ss:

I, Ira H. Mottesheard, Clerk of the District Court of (60) the United States for the Southern District of West Virginia, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings, in accordance with the Praecipe, Agreement and Stipulation filed by Counsel for the preparation of same, in the matter of Wayne United Gas Company, Debtor, No. 3187 in Bankruptcy, and now of record and on file in my said office.

IN TESTIMONY WHEREOF, I hereto set my hand and the seal of said Court, at Charleston, in said District, this 26th day of June, 1936, and in the 160th year of the Independence of the United States of America.

IRA H. MOTTESHEARD, Clerk.
D. C. U. S., S. D. W. VA.

(Seal)

## PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

(61)

No. 4080

Wayne United Gas Company, a corporation, Appellant,

versus

Owens-Illinois Glass Company, Libbey-Owens-Ford Glass Company, The Chase National Bank of the City of New York, a corporation, and Paul C. Beardslee, Trustees, Appellees.

APPEAL from the District Court of the United States for the Southern District of West Virginia, at Charleston.

June 30, 1936, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, bond, and citation are certified up under section 7 of Rule 14.

Same day, the appearance of Fred O. Blue and Robert S. Spilman is entered for the appellant.

Same day, the appearance of H. D. Rummell and A. G. Stone is entered for the appellees.

## NOTICE OF MOTION OF APPELLEES TO DISMISS APPEAL.

Filed June 30, 1936.

(Style of Court and Title Omitted.)

To:

BLUE, DAYTON & CAMPBELL,
PRICE, SMITH & SPILMAN,
Counsel for Appellant:

You will please take notice that on Tuesday, June 30, 1936, at 10:00 o'clock A. M., in the City of Asheville, North Carolina, the undersigned will move the United States Circuit Court of Appeals for the Fourth Circuit to dismiss the appeal granted by the District Court of the (62) United States for the Southern District of West Virginia, on June 11, 1936, in the matter of the reorganization of the Wayne United Gas Company.

The grounds of said motion will be that the district court was without jurisdiction to consider the application for rehearing in said proceeding, and that the order of said court, entered May 12, 1936, granting such rehearing, and the further order of said court, entered May 28, 1936, disapproving the petition for reorganization and dismissing said proceeding, were null and void and of no effect whatever. For the reasons aforesaid, the allowance of said appeal on June 11, 1936, was wholly beyond the power and jurisdiction of the district court, the effect thereof being to give the appellant herein an appeal from the final order entered on March 2, 1936, disapproving the petition for reorganization and dismissing said proceeding, more than thirty days after the entry of said order, contrary to the provisions of Section 25-a of the Bankruptcy Statute.

Respectfully,

RUMMEL, BLAGG & STONE
By A. G. STONE
Counsel for Libbey-Owens-Ford Glass Company and Owens-Illinois Glass Company.

Copy of foregoing notice received June 22, 1936:

PRICE, SMITH & SPILMAN
By J. D. ALTIZER
BLUE, DAYTON & CAMPBELL

## MOTION OF APPELLEES TO DISMISS APPEAL.

Filed June 30, 1936.

(Style of Court and Title Omitted.)

Come now, the Owens-Illinois Glass Company and the Libbey-Owens-Ford Glass Company, the appellees herein, by H. D. Rummel, their counsel, and move the Court to dismiss with costs the appeal taken herein to this Court by the Wayne United Gas Company, upon the (63) following grounds:

1. The District Court was without jurisdiction to consider the application for rehearing in the above styled proceeding, and the order of the District Court, entered May 12, 1936, granting such rehearing, and the further order of said Court, entered May 28, 1936, disapproving the petition for reorganization and dismissing said proceeding, were null and void.

2. The appeal was not applied for within the time fixed by statute, i. e., within thirty days after the entry of the final order of the District Court of March 2, 1936, disapproving the petition for reorganization and dismissing said proceeding, and the allowance of said appeal on June 11, 1936, was therefore beyond the power and jurisdiction of the District Court, the effect thereof being to give the appellant herein an appeal from the said final order of March 2, 1936, more than thirty days after the entry thereof contrary to the provision of Section 25(a) of the Bankruptcy Act.

RUMMEL, BLAGG & STONE
H. D. RUMMEL
Counsel for Appellees.

Dated June 30, 1936.

## ARGUMENT OF CAUSE ON MOTION TO DISMISS

June 30, 1936, (June term, 1936) cause came on to be heard on the motion of the appellees to dismiss the appeal, before Parker, Northcott and Soper, Circuit Judges, and is argued by counsel—further argument postponed until tomorrow, July 1, 1936.

July 1, 1936, (June term, 1936) cause came on to be further heard on the motion of the appellees to dismiss the appeal, before Parker, Northcott and Soper, Circuit Judges, and is further argued by counsel, and submitted.

## PER CURIAM OPINION

(64) Filed July 4, 1936.

UNITED STATES CIRCUIT COURT OF APPEALS

FOURTH CIRCUIT

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No. 4080.

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Wayne United Gas Company, a corporation,
Appellant,

versus

Owens-Illinois Glass Company, Libbey-Owens-Ford Glass Company, The Chase National Bank of the City of New York, a corporation, and Paul C. Beardslee, Trustees,

Appellees.

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Appeal from the District Court of the United States for the Southern District of West Virginia, at Charleston.

On Motion of Appellees to dismiss Appeal.

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(Argued June 30 and July 1, 1936.
Decided July 4, 1936.)

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Before Parker, Northcott and Soper, Circuit Judges.

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Robert S. Spilman and Fred O. Blue for Appellant, and H. D. Rummel (A. G. Stone on brief) for Appellees.

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Per Curiam:

An order was entered by the court below on March (65) 2, 1936 dismissing a petition for corporate reorganization under Section 77-B of the Bankruptcy Act as amended. A petition for appeal under 24(b) of the Bankruptcy Act was denied by this Court April 15, 1936. See *Wayne United Gas Co.* v. *Owens-Illinois Glass Company et al.* (C. C. A. 4th) 83 Fed. (2d) 98. Thereafter, on April 24, 1936, the debtor filed a petition for rehearing in the court below; and that court on May 12, 1936, entered an order granting a rehearing and setting aside the order of March 2nd. On May 22, 1936, debtor filed an amended and supplemental petition for reorganization which was dismissed on May 28, 1936. Debtor appealed from this order of dismissal and the matter is before us on a motion to dismiss the appeal.

We are of opinion that the court below was without power to grant a rehearing and set aside the order of March 2nd after the expiration of the period allowed for appeal from that order. *United States* v. *East* (C. C. A. 8th) 80 Fed. (2d) 134, 135; *Bonner* v. *Pottorf* (C. C. A. 10th) 47 Fed. (2d) 852, 855; *Stearn* v. *White Co.* (C. C. A. 7th) 295 Fed. 833, 837. The order appealed from as well as the order setting aside the order of

March 2nd was therefore void; and as the effect of these orders was merely to extend the time for appealing from the order of March 2nd, we shall dismiss the appeal as though it had been taken from that order. Authority for this procedure is found in the cases cited.

*Appeal Dismissed.*

## DECREE.

(66) Filed and Entered July 4, 1936.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT

No. 4080.

Wayne United Gas Company, a corporation, Appellant,

vs.

Owens-Illinois Glass Company, Libbey-Owens-Ford Glass Company, The Chase National Bank of the City of New York, a corporation, and Paul C. Beardslee, Trustees, Appellees.

APPEAL from the District Court of the United States for the Southern District of West Virginia, at Charleston.

THIS CAUSE came on to be heard on the motion of the appellees to dismiss the appeal, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the appeal in this cause, be, and the same is hereby, dismissed with costs.

July 4, 1936.

JOHN J. PARKER
Senior Circuit Judge.

## STIPULATION AS TO RECORD UPON PETITION OF WAYNE UNITED GAS COMPANY TO THE SUPREME COURT OF THE UNITED STATES FOR WRIT OF CERTIORARI.

Filed July 24, 1936.

(Style of Court and Title Omitted.)

It is stipulated and agreed by counsel for the above named appellant and appellees that the papers and proceedings hereinafter designated are the parts of the record in the case material upon the petition of said appellant to the Supreme Court of the United States for a writ of *certiorari* to the United States Circuit Court of Appeals for the Fourth Circuit to review its order entered July 4th, 1936, dismissing appellant's appeal from the District Court, and that the transcript of the record accompanying said petition shall consist thereof, namely:

1. Order of the District Court of the United States (67) for the Southern District of West Virginia, entered March 2, 1936, disapproving and dismissing the original and first amended and supplemental petitions of the Debtor, said Wayne United Gas Company, for reorganization.

2. Petition of said Debtor to said District Court to set aside said order of March 2, 1936, and for a rehearing, filed April 24, 1936. (The exhibits marked "Exhibit Decree" and "Exhibit Notice," with said petition are to be omitted.)

3. Said "Petitioner's Assignment of Errors" filed with said petition for rehearing.

4. Order of April 24, 1936, filing said petition and assignment of errors.

5. Order of May 12, 1936, vacating order of March 2, 1936, and granting said petitioner a rehearing.

6. "Debtor's Second Amended and Supplemental Petion under Section 77(B) of the Bankruptcy Act," filed May 28, 1936.

7. Order of May 28, 1936, disapproving and dismissing Debtor's original and first and second amended and supplemental petitions for reorganization.

8. The following statement as to the appeal taken by sai Debtor from said order of May 28, 1936: "It is stipulated and agreed that on June 11, 1936, said Wayne United Gas Company filed in said District Court its petition for an appeal under Section 25(a) of the Bankruptcy Act, as amended, from said decree of May 28, 1936, to the United States Circuit Court of Appeals for the Fourth Circuit, and its assignment of errors (see 9, below) in support thereof; that said appeal, with supersedeas, was allowed by an order of said District Court entered June 11, 1936; that bond with approved security was given by said petitioner on the same day, in compliance with the terms of said order; that notice of said (68) appeal was given by said petitioner on said day to all other parties to this proceeding (the several appellees above named); and that citation was issued upon said appeal and service thereof accepted by all said parties on said June 11, 1936."

9. The above mentioned "Assignment of Errors and Prayer for Reversal" of said Wayne United Gas Company, filed with its said petition for appeal on June 11, 1936.

10. The order of the United States Circuit Court of Appeals for the Fourth Circuit, entered July 4, 1936,

dismissing said appeal of said Wayne United Gas Company, upon motion of said Owens-Illinois Glass Company et al., the appellees above named.

11. Per curiam opinion of said Circuit Court of Appeals, rendered said 4th day of July, 1936, upon said motion.

12. All other proceedings, or proper notation or memoranda thereof, of said Circuit Court of Appeals in this cause subsequent to its entry of said order dismissing said appeal.

13. This stipulation.

FRED O. BLUE
ROBERT S. SPILMAN
Counsel for Wayne United Gas Company.

H. D. RUMMEL
Counsel for Owens-Illinois Glass Company and Libbey-Owens-Ford Glass Company.

THOMAS B. JACKSON
Of Counsel for The Chase National Bank of the City of New York and Paul C. Beardslee, Trustees.

Dated: Charleston, West Virginia,
July 23rd, 1936.

July 27, 1936, petition of Appellant for a stay of the mandate is filed.

## ORDER STAYING MANDATE.

(69) Filed July 28, 1936.

(Style of Court and Title Omitted.)

UPON THE APPLICATION of the appellant, by its

counsel Fred O. Blue and Robert S. Spilman, and for good cause shown,

IT IS ORDERED that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending the application of the appellant in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this Court or the said Supreme Court, and provided said application is filed in the said Supreme Court within 30 days from this date.

July 28, 1936.

JOHN J. PARKER
Senior Circuit Judge.

## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Cir-
(70) cuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, made up in accordance with the stipulation of counsel for the respective parties, as the same remain upon the records and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 31st day of July, A. D., 1936.

(Seal of Court)

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.